

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Lockheed Martin Corporation,)	IB Docket No. 02-87
COMSAT Corporation, and)	
COMSAT Digital Teleport, Inc.,)	
Assignors)	
)	
and)	
)	
Intelsat, Ltd.,)	
Intelsat (Bermuda), Ltd.,)	
Intelsat LLC, and)	
Intelsat USA License Corp.,)	
Assignees)	
)	
Applications for Assignment of Earth)	
Station and Wireless Licenses and)	
Section 214 Authorizations and Petition)	
For Declaratory Ruling)	

To: Chief, International Bureau
Chief, Wireless Telecommunications
Bureau

**REPLY TO OPPOSITION TO PETITION FOR
PARTIAL RECONSIDERATION**

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby replies to the joint opposition ("Opposition") of Lockheed Martin Corporation ("Lockheed"), Comsat Digital Teleport, Inc. ("Comsat"), Intelsat, Ltd., Intelsat LLC, and Intelsat USA License Corp. (collectively "Intelsat") (Lockheed, Comsat and Intelsat collectively as the "Applicants") to the PanAmSat Petition for Partial

Reconsideration (“Petition”) of the Order and Authorization (the “Order”)¹ in the above-captioned proceeding.²

DISCUSSION

In their Opposition, Applicants respond to arguments PanAmSat never made, and fail to address the arguments PanAmSat did make.

Applicants claim that PanAmSat is seeking to impose “additional dominant carrier regulation.”³ To the contrary, PanAmSat asks that the Commission maintain the regulatory status quo by continuing to apply dominant carrier⁴ and alternative rate⁵ regulation – or their equivalent – to services provided on thin routes and in other non-competitive markets.⁶

Pre-closing, all of the services that Comsat provided to non-competitive markets were subject to such regulation, because: (1) Comsat was required to operate as a common carrier; (2) the Commission found Comsat to have market power on non-competitive routes; and (3) the Commission therefore applied dominant carrier/alternative rate regulation to the services Comsat provided on non-competitive routes. Post-closing, however, and notwithstanding the fact that Intelsat (by virtue of the closing) possesses the market power on non-

¹ *In the Matter of Lockheed Martin Corporation, Comsat Corporation, and Comsat Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA Sales Corp., Assignees Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, Order and Authorization*, IB Docket No. 02-87, ¶ 58 (rel. Oct. 25, 2002) (“Assignment Order”).

² See *Opposition to Petitions for Reconsideration of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp., Assignees Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, December 13, 2002 (“Opposition”). See also *PanAmSat Petition For Partial Reconsideration*, November 25, 2002 (“Petition”).

³ *Opposition* at 2.

⁴ *Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, Order and Notice of Proposed Rulemaking*, File No. 60-SAT-ISP-97, FCC 98-78, 13 FCC Rcd 14083 (1988) (“Dominant Carrier Order”).

⁵ See also *Comsat Corporation Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation, Report and Order*, 14 FCC Rcd 3065 (1999) (“Alternative Rate Regulation Order”).

competitive routes that Comsat once had, the *Order* gives Intelsat the option of providing services on non-competitive routes: (1) on a common carrier basis, in which case it will be subject to dominant carrier/alternative rate regulation; or (2) on a non-common carrier basis, in which case it will be unregulated. There is no basis in the record or otherwise for changing the regulatory status quo in this fashion by permitting unregulated operations by a party possessing market power.

PanAmSat's concerns have nothing to do, as Applicants claim, with offering "attractive service options" or more favorable terms to Comsat's former customers.⁷ Rather, PanAmSat seeks to prevent Intelsat from using its market power on non-competitive routes to advantage itself on competitive routes. Intelsat could, for example, use monopoly profits earned on non-competitive routes to subsidize its rates on competitive routes. It was the prospect of such abuses that prompted the Commission to apply dominant carrier/alternative rate regulation to Comsat. Unless Intelsat is subject to comparable regulation, the market power it inherited from Comsat will be unchecked.

The fact that Intelsat's distribution agreements and wholesale customer agreements may have "nondiscriminatory pricing" provisions⁸ provides no comfort. These private agreements – which are not filed with the Commission and can be modified at any time – are no substitute for dominant carrier regulation. Moreover, as a common carrier, Comsat was required by statute, not private agreement, to refrain from price discrimination. If this statutory requirement was insufficient to prevent the abuse of market power on non-competitive routes absent additional regulation, then language to that effect in Intelsat's private agreements certainly is insufficient.

⁶ PanAmSat is not necessarily asking for the same dominant carrier or alternative-based price regulations as Comsat was under. However, the Commission must provide protections substantially equivalent to the regulations that apply to Comsat pre-closing.

⁷ See Opposition at 4-5.

⁸ Opposition at 4.

Neither is it helpful that Intelsat “has taken on Comsat’s common carrier obligations.”⁹ Intelsat is only subject to these “obligations” when it chooses to provide service through its common carrier subsidiary. Intelsat remains free under the *Order* to provide service, either directly or through other subsidiaries, on an unregulated private carrier basis, in which case no common carrier requirements – dominant or otherwise – will apply. Intelsat’s request to convert Comsat’s common carrier earth station licenses to dual use common/non-common carrier status suggests that private carriage is precisely what Intelsat has in mind.¹⁰

Applicants’ statement to the effect that “Intelsat already has authority to provide private carriage service on thin routes”¹¹ is true but irrelevant. PanAmSat does not take issue *per se* with Intelsat’s existing authority. Rather, PanAmSat seeks, if Intelsat wishes to continue operating as a private carrier on thin routes now that it has market power on those routes, to have the Commission adopt protections to prevent Intelsat from abusing its market power.

Finally, Applicants question whether PanAmSat’s Petition is procedurally sound. Applicants’ argument is based on their contention that the *Order* did not “eliminate dominant carrier regulation for switched voice, private line, and occasional use video services to non-competitive markets.”¹² For reasons that are discussed above, however, the *Order* did effectively eliminate such regulation because it enables Intelsat to provide service to non-competitive markets on an unregulated basis. Accordingly, Applicant’s procedural argument should be rejected.

⁹ Opposition at 4.

¹⁰ Order at ¶ 29.

¹¹ Opposition at 3-4.

¹² Opposition at 2-3, quoting PanAmSat’s Petition.

CONCLUSION

For the reasons stated herein and in PanAmSat's Petition, the Commission should, on reconsideration, apply dominant carrier/ alternative rate regulation, or something equivalent, to Intelsat's provision of switched voice, private line, and occasional use video services to thin routes and other non-competitive markets.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Opposition to Petition for Partial Reconsideration was sent by first-class mail, postage prepaid, this 26th day of December, 2002, to each of the following:

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